

Assembly Bill No. 12

Passed the Assembly February 15, 2009

Chief Clerk of the Assembly

Passed the Senate February 14, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 8880.5.5 and 8880.56 of, to add Article 4.5 (commencing with Section 8880.46.5) to Chapter 12.5 of Division 1 of Title 2 of, and to repeal Sections 8880.43 and 8880.67 of, the Government Code, relating to the California State Lottery, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, Evans. California State Lottery.

(1) The California State Lottery Act, subject to the approval by the voters, appropriates moneys, commencing with the 2009–10 fiscal year, on an annual basis from the General Fund to various educational entities based on specified factors. The act provides that specified provisions regarding General Fund appropriations may only be amended by a vote of the people.

This bill would, commencing with the 2010–11 fiscal year, adjust the method of annually calculating specified appropriations.

Existing law allows the director of the lottery to purchase or lease goods and services as are necessary for effectuating the purposes of the provisions governing the lottery.

This bill would instead provide that the director has express authority, subject only to commission approval, to make any and all expenditures as are necessary or reasonable for effectuating the purposes of those provisions. The bill would require that, with regard to employee incentives, the director shall exercise his or her authority consistent with laws relating to state employer–employee relations.

Existing law requires the director, in all procurement decisions, to award contracts to the responsible supplier submitting the lowest and best proposal that maximizes the benefits to the state in relation to the areas of security, competence, experience, and timely performance.

This bill would delete the requirement that the director award contracts to the responsible supplier submitting the lowest proposal.

Existing law requires the commission to adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than \$100,000.

This bill would instead require the commission to adopt and publish those procedures for any procurement or contract involving an expenditure of more than \$500,000.

The bill would declare that these provisions would become effective only when submitted to and approved by the voters.

(2) Existing law requires the director to engage an independent firm of certified public accountants, as specified, and requires the Controller to conduct certain audits of the lottery.

The bill would recodify those provisions of the act regarding audits and would require specified audits and postaudits to be posted on the Internet. The bill would declare that these provisions further the purposes of the act.

(3) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 8880.5.5 of the Government Code, as added by Chapter 764 of the Statutes of 2008, is amended to read:

8880.5.5. (a) Notwithstanding Section 13340 of the Government Code, commencing with the 2009–10 fiscal year and each fiscal year thereafter, the following annual appropriations are hereby made from the General Fund:

(1) To the State Department of Education, for allocation to school districts, county offices of education, and charter schools serving kindergarten and grades 1 to 12, inclusive, or any part thereof, on the basis of an equal amount for each unit of average daily attendance, as defined by law and adjusted pursuant to subdivision (1) of Section 8880.5, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (a) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be

determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in average daily attendance, as defined by law and adjusted pursuant to subdivision (l) of Section 8880.5, for school districts, county offices of education, and charter schools serving kindergarten and grades 1 to 12, inclusive, from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(2) To the Board of Governors of the California Community Colleges, for allocation to community college districts, on the basis of an equal amount for each full time equivalent student, as defined by law, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (b) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in full time equivalent students for community college districts from the second preceding fiscal year to the preceding fiscal year and then by applying a cost of living adjustment pursuant to paragraph (10) of this subdivision.

(3) To the Board of Trustees of the California State University, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (c) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in full-time equivalent students for the California State University system from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(4) To the Regents of the University of California, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (d) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in full-time equivalent students for the University of California system from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(5) To the Board of Directors of the Hastings College of the Law, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (e) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in full-time equivalent students for the Hastings College of the Law from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(6) To the California Department of Corrections and Rehabilitation, for educational programs serving kindergarten and grades 1 to 12, inclusive, or any part thereof, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (f) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in equivalent average daily attendance for the Department of Corrections and Rehabilitation Division of Juvenile Justice from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(7) To the State Department of Education, for support of the State Special Schools, an amount equal to the payments made during the 2008–09 fiscal year pursuant to subdivision (g) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in equivalent average daily attendance for the State Special Schools from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(8) To the State Department of Developmental Services, for clients with developmental disabilities who are enrolled in developmental center education programs, an amount equal to the payments made to the State Department of Developmental Services during the 2008–09 fiscal year pursuant to subdivision (h) of Section 8880.5, adjusted for inflation and attendance. The amount

appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in equivalent average daily attendance for the State Department of Developmental Services from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(9) To the State Department of Mental Health, for clients with mental disabilities who are enrolled in state hospital education programs, an amount equal to the payments made to the State Department of Mental Health during the 2008–09 fiscal year pursuant to subdivision (h) of Section 8880.5, adjusted for inflation and attendance. The amount appropriated each year pursuant to this paragraph shall be determined by multiplying the amount appropriated in the preceding fiscal year by one plus the percent change in equivalent average daily attendance for the State Department of Mental Health from the second preceding fiscal year to the preceding fiscal year and then by applying a cost-of-living adjustment pursuant to paragraph (10) of this subdivision.

(10) The amounts appropriated pursuant to this subdivision shall be increased each year by the change in the cost-of-living determined pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution.

(b) The amounts appropriated for the 2009–10 fiscal year pursuant to paragraphs (1), (2), (6), (7), (8), and (9) of subdivision (a) shall be in addition to the sums required by, and shall not be considered towards fulfilling the funding requirements of Section 8 of Article XVI of the California Constitution.

(c) The amounts appropriated for the 2009–10 fiscal year pursuant to paragraphs (1), (2), (6), (7), (8), and (9) of subdivision (a) shall not offset or in any way reduce the maintenance factor determined pursuant to subdivisions (d) and (e) of Section 8 of Article XVI of the California Constitution, and shall be in addition to the amount of maintenance factor allocated in the 2009–10 fiscal year pursuant to subdivision (e) of Section 8 of Article XVI of the California Constitution.

(d) Commencing with the 2010–11 fiscal year and each fiscal year thereafter, for the purposes of making the computations required by Section 8 of Article XVI of the California Constitution,

the appropriations made by paragraphs (1), (2), (6), (7), (8), and (9) of subdivision (a) of this section for the prior fiscal year shall be deemed to be included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202 of the Education Code.

(e) Commencing with the 2010–11 fiscal year, the percentage determined pursuant to paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, as adjusted pursuant to Chapter 2 (commencing with Section 41200) of Part 24 of the Education Code, shall be increased by adding to it the number of percentage points determined by dividing the total amount allocated pursuant to subdivisions (a), (b), (f), (g), and (h) of Section 8880.5 for the 2008–09 fiscal year by the total General Fund revenues that may be appropriated pursuant to Article XIII B of the California Constitution for the 2008–09 fiscal year.

(f) Commencing with the 2009–10 fiscal year, references in law to lottery education funds, to funds allocated pursuant to Section 8880.5, to funds allocated from the California State Lottery Education Fund, or similar references in law to the proceeds of lottery revenues allocated for the benefit of public education to the entities described in subdivisions (a), (b), (f), (g), and (h) of Section 8880.5 shall be deemed to be references to the funds appropriated pursuant to this section. This subdivision shall be broadly construed to effectuate its purpose.

SEC. 2. Section 8880.43 of the Government Code is repealed.

SEC. 3. Article 4.5 (commencing with Section 8880.46.5) is added to Chapter 12.5 of Division 1 of Title 2 of the Government Code, to read:

Article 4.5. Public And Financial Accountability

8880.46.5. The director shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the lottery. The audited financial statements shall be presented to the commission, the Governor, the Controller, the Treasurer, the Attorney General, and the Legislature not more than 120 days after the close of the fiscal year. The independent auditor’s report shall be posted on the Internet.

8880.46.6. The Controller shall conduct quarterly and annual postaudits of all accounts and transactions of the commission and other special postaudits as the Controller deems necessary. The Controller or his or her agents conducting an audit under this chapter shall have access and authority to examine any and all records of the commission, its distributing agencies, lottery contractors, and lottery game retailers. The Controller may issue a public report of any annual postaudit, which shall be posted on the Internet.

SEC. 4. Section 8880.56 of the Government Code is amended to read:

8880.56. (a) Notwithstanding any other provision of this chapter or of any other law, the director has express authority, subject only to commission approval, to make any and all expenditures that are necessary or reasonable for effectuating the purposes of this chapter, including, but not limited to, payment for the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, consumer, retailer, and employee incentives, public relations, communications, compensation paid to the lottery game retailers, bonding for lottery game retailers, printing, distribution of tickets or shares, reimbursement of costs of services provided to the lottery by other governmental entities, and payment for the costs of any other goods and services necessary or reasonable for effectuating the purposes of this chapter. The director may not contract with any private party for the operation and administration of the California State Lottery, created by this chapter. However, this section does not preclude procurements that integrate functions such as game design, supply, advertising, and public relations. In all procurement decisions, the director shall, subject to the approval of the commission, award contracts to the responsible supplier submitting the best proposal that maximizes the benefits to the state in relation to the areas of security, competence, experience, and timely performance, shall take into account the particularly sensitive nature of the California State Lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery and the objective of raising net revenues for the benefit of the public purpose described in this chapter. With regard to employee incentives, the director shall exercise his or her authority consistent with the provisions

of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(b) Notwithstanding any other provision of this chapter, the following shall apply to contracts or procurement by the lottery:

(1) To ensure the fullest competition, the commission shall adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than five hundred thousand dollars (\$500,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The director shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services.

(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than five hundred thousand dollars (\$500,000). The commission shall establish, as part of its bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

(3) The provisions of Article 1 (commencing with Section 11250) of Chapter 3 of Part 1 of Division 3 apply to the commission.

(4) The commission is subject to the Small Business Procurement and Contract Act, as provided in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3.

(5) In advertising or awarding any general contract for the procurement of goods and services exceeding five hundred thousand dollars (\$500,000), the commission and the director shall require all bidders or contractors, or both, to include specific plans or arrangements to utilize subcontracts with socially and economically disadvantaged small business concerns. The subcontracting plans shall delineate the nature and extent of the services to be utilized, and those concerns or individuals identified for subcontracting if known.

It is the intention of the Legislature in enacting this section to establish as an objective of the utmost importance the advancement of business opportunities for these small business concerns in the private business activities created by the California State Lottery.

In that regard, the commission and the director shall have an affirmative duty to achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs.

By July 1, 1986, the commission shall adopt proposal evaluation procedures, criteria, and contract terms which are consistent with the advancement of business opportunities for small business concerns in the private business activities created by the California State Lottery and which will achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs. The proposal evaluation procedures, criteria, and contract terms adopted shall be reported in writing to both houses of the Legislature on or before July 1, 1986.

For the purposes of this section, socially and economically disadvantaged persons include women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other natural persons found by the commission to be disadvantaged.

The commission shall report to the Legislature by July 1, 1987, and by each July 1 thereafter, on the level of participation of small businesses, socially and economically disadvantaged businesses, and California businesses in all contracts awarded by the commission.

(6) The commission shall prepare and submit to the Legislature by October 1 of each year a report detailing the lottery's purchase of goods and services through the Department of General Services. The report shall also include a listing of contracts awarded for more than one hundred thousand dollars (\$100,000), the name of the contractor, amount and term of the contract, and the basis upon which the contract was awarded.

(c) The lottery shall fully comply with the requirements of paragraphs (2) to (5), inclusive, of subdivision (b), except that any function or role which is otherwise the responsibility of the Department of Finance or the Department of General Services shall instead, for purposes of this subdivision, be the sole

responsibility of the lottery, which shall have the sole authority to perform that function or role.

(d) Where a conflict exists between the provisions of this chapter and any other provision of law, the provisions of this chapter shall control.

SEC. 5. Section 8880.67 of the Government Code is repealed.

SEC. 6. Sections 1 and 4 of this act amend Chapter 12.5 (commencing with Section 8880) of Division 1 of Title 2 of the Government Code, an initiative statute, and shall become effective only when submitted to and approved by the voters. Notwithstanding subdivision (b) of Section 19 of Chapter 764 of the Statutes of 2008, the Secretary of State shall submit Section 8880.5.5 of the Government Code, as amended by Section 1 of this act, and Section 8880.56 of the Government Code, as amended by Section 4 of this act, to the voters at the next statewide election instead of Section 8880.5.5 of the Government Code, as added by Section 6 of Chapter 764 of the Statutes of 2008, and Section 8880.56 of the Government Code, as amended by Section 12 of Chapter 764 of the Statutes of 2008.

SEC. 7. The Legislature finds and declares that Sections 2, 3, and 5 of this act further the purposes of the California State Lottery Act of 1984, enacted by Proposition 37 at the November 6, 1984, general election.

SEC. 8. This act addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to increase revenues at the earliest possible time, it is necessary that this act take effect immediately.

Approved _____, 2009

Governor